

ISSUE DATE: April 24, 1996

DOCKET NO. P-413/C-96-147

ORDER ASSERTING JURISDICTION OVER COMPLAINT, REQUIRING ANSWER,
AND ESTABLISHING COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint Against Wright-Hennepin Cooperative Electric Association for Provision of Unauthorized Telephone Service

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PROCEDURAL HISTORY

On February 13, 1996, Lakedale Telephone Company (Lakedale) filed a formal complaint against Wright-Hennepin Cooperative Electric Association (W-H) alleging that W-H has been providing telephone service in Minnesota without Commission authority. Lakedale requested an expedited proceeding. Copy attached.

On February 28, 1996, Wright-Hennepin Cooperative Association (W-H) filed a response to Lakedale's complaint.

On April 2, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Lakedale's Complaint

Lakedale is a local exchange carrier serving several exchanges primarily in Wright County. Wright-Hennepin Cooperative Electric Association is a cooperative association providing retail electric service to customers in western Hennepin and Wright counties. Lakedale has filed this complaint pursuant to Minn. Rules 7829.1700.

In its complaint, Lakedale related that sometime in the fall of 1995 W-H began leasing space in its Maple Lake office to an entity called Product Technologies, Inc. (PTI). Lakedale stated that it installed service for PTI in September of 1995 and assigned a Maple Lake telephone number to PTI.

Subsequently, based on tests performed by Lakedale employees and analysis of PTI's Lakedale

telephone usage, Lakedale concluded that W-H was reselling telephone service, through its private branch exchange (PBX), to PTI. Lakedale asserted that in so doing W-H is acting as a telephone company as defined by Minn. Stat. § 237.01, subd. 2 (1994) and that W-H is required to apply for a certificate of authority under Minn. Stat. § 237.16 (1994).

Lakedale requested that the Commission find that W-H is acting as a telephone company and that it must apply for a certificate of authority from the Commission. Lakedale also requested that the Commission issue a cease and desist order against W-H until W-H applies for, and is granted, a certificate of authority. Finally, Lakedale sought restitution from W-H for monetary losses: revenues and profits that Lakedale would have experienced but for W-H's unauthorized activity.

B. W-H's Response

W-H filed a voluntary response denying that it is acting as a telephone company and asking the Commission to dismiss Lakedale's complaint.

C. Commission Analysis and Action

The Commission will consider this complaint pursuant to Minn. Rules 7829.1700-1900.

The Commission's initial review is directed by Minn. Rules, Part 7829.1800, subp. 1 which requires that the Commission review a formal complaint to determine if it has 1) jurisdiction over the complaint and 2) reasonable grounds to investigate the allegation.

Jurisdiction: Minn. Stat. Chapters 216A and 237 give the Commission broad authority to regulate companies offering telecommunications services in Minnesota. In general, the Commission regulates telephone companies (as defined in Minn. Stat. § 237.01, subd. 2) and the services they provide. The Commission regulates telephone companies and grants the certificates of authority for telephone companies to operate in Minnesota. The question raised by Lakedale's complaint is whether W-H is acting as a telephone company without Commission approval. The Commission has the authority to decide if W-H is acting as a telephone company, and, therefore, has jurisdiction over this complaint proceeding.

Reasonable Grounds to Investigate: The Commission finds that W-H's simple denial does not adequately rebut Lakedale's allegations. The parties' exchange to-date and the tests Lakedale maintains it has done and its analysis of PTI's telephone usage provide reasonable grounds to investigate this matter.

Having made these threshold findings (jurisdiction and reasonable grounds to investigate) the Commission will proceed, pursuant to Minn. Rules, Part 7829.1800, subp. 2, to direct W-H to file a formal Answer to Lakedale's Complaint, responding to the specific allegations of Lakedale's Complaint.

The Commission further finds that its investigation of this matter will be assisted by hearing from W-H and any commenting parties regarding a set of issues set out fully in Ordering

Paragraph 5.

ORDER

1. The Commission hereby asserts jurisdiction over the Complaint filed by Lakedale Telephone Company (Lakedale) in this matter (copy attached), serves the attached Complaint upon Wright-Hennepin Cooperative Electric Association (W-H or the Cooperative), and will proceed as specified in the following Ordering Paragraphs.
2. Within 20 days of the date of this Order, W-H shall file an Answer which responds to the specific allegations of Lakedale's Complaint and, in addition, addresses the issues listed in Ordering Paragraph 5. W-H shall file its Answer with the Commission, the Department of Public Service, the Office of the Attorney General and Lakedale.
3. Within 30 days of this Order, any party wishing to file comments on this Complaint shall do so, including comments on the issues listed in Ordering Paragraph 5. This 30 day period shall be known as the initial comment period.
4. Parties that submit initial comments pursuant to Ordering Paragraph 3 are authorized to submit reply comments within 10 days of the end of the initial (30 day) comment period.
5. W-H in its Answer and interested parties in any comments filed pursuant to Ordering Paragraph 3 shall address the following issues:
 - (1) What, if any, telecommunications services does W-H provide to PTI? How are PTI calls routed to the Metropolitan Calling Area (MCA) and how are other toll calls routed?
 - (2) Do the telecommunication services allegedly provided by W-H to PTI constitute private shared telecommunications service as defined in Minn. Stat. § 237.68, subd. 1?
 - (3) What, if any, compensation does W-H receive for any telecommunications services that it allegedly provides to PTI? What lease provisions are in effect between W-H and PTI?
 - (4) How does PTI use any telecommunications services allegedly provided by W-H?
 - (5) Is W-H furnishing any telephone service to the public in Minnesota? If so, what services are being furnished, when did W-H begin furnishing such services and has W-H violated Minn. Stat. § 237.16, subd. 1?
 - (6) If W-H has violated Minn. Stat. § 237.16, what, if any, Commission action or

penalty is warranted?

- (7) How is the provision of service by W-H affected by the Commission's decision in the Jones Intercable matter, Docket No. P-5110/C-94-1139?¹
 - (8) Are there any other relevant issues the Commission should consider?
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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¹ See In the Matter of a Complaint Against Jones Intercable for Provision of Unauthorized Telephone Service, Docket No. P-5110/C-94-1139, ORDER TO CEASE UNAUTHORIZED PROVISION OF TELECOMMUNICATIONS SERVICE IN MINNESOTA (April 24, 1996).